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Before the
Federal Communications Commission

In the Matter of)

Implementation of Section 10 of the)
Cable Consumer Protection and)
Competition Act of 1992)

MM Docket No.
92-263

Consumer Protection and Customer
Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

JOINT REPLY

Viacom International Inc., Providence Journal Company ¹,
Multivision Cable TV Corp. and Cablevision Industries, Inc.
(hereinafter "Companies"), by their attorneys, hereby submit
their Joint Reply in the above-captioned rulemaking
proceeding. This reply will amplify points previously made
in the Companies' comments on the issue of implementation of
customer service standards. In addition, the Companies will
respond to several specific standards that were discussed in
various comments.

I. IMPLEMENTATION OF CUSTOMER SERVICE STANDARDS

On the issue of implementation of customer service
standards, the Companies based their comments on the
assumption that local franchising authorities could impose
standards more stringent than the Commission's only through
bilateral negotiation with and consent of the franchisee. In
the comments submitted in this proceeding, the need for

¹ Providence Journal Company conducts its cable
television operations through its subsidiaries Colony
Communications, Inc. and King Videocable Company.

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bilateral negotiations or mutual agreement emerged as a major point of contention between state and local regulators (hereinafter jointly referred to as "regulatory authorities"), on the one hand, and cable industry commenters, on the other. Many regulatory authorities supported their right to impose on the cable operator -- unilaterally and at any time during the franchise term -- customer service standards that exceed the FCC's. Cable industry comments, however, maintained that such unilateral standards are both prohibited by law and ill-advised from a policy and practical standpoint. The Companies wish to weigh in on the side of comments opposing the right of local franchising authorities to impose customer service standards more stringent than the Commission's unless such standards are the product of bilateral negotiation between the franchising authority and the cable operator or are justified to and approved by the Commission.

A. Legal Impediments to Unilateral Imposition of More Stringent Customer Service Obligations:

As other cable commenters ably have pointed out, the 1992 Cable Act neither requires nor permits unilateral imposition of more stringent customer service standards by franchising authorities. The first sentence of Section 632(c)(2) of the Act provides:

Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service

requirements that exceed the standards established by the Commission under subsection (b).

Unilateral imposition of more stringent standards by franchising authorities necessarily would preclude such negotiation and agreement, rendering the above-quoted provision meaningless.

In support of their right to exceed FCC standards unilaterally, franchising authorities rely on the second sentence of Section 632(c)(2), which provides:

Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.

This sentence clearly refers to customer service standards of general applicability, i.e., not to standards that are specific to the video-programming distribution industry. For example, the Act should not interfere with state or local establishment and enforcement of customer service laws affecting public safety -- such as laws that require identification and/or bonding by any service business (e.g., appliance repair, pest control, carpet installation) of their employees who go into private homes to perform a service. Measures requiring businesses to notify customers of changes in service or billing policies, preventing fraudulent billing of customers, or prohibiting usurious interest for late

payments by any service or retail business are more examples of customer service laws of general applicability that would be covered by the provision in question.

As the comments also point out, when there is a franchise agreement in place that contains customer service requirements to which the contracting parties have agreed (regardless of whether expressed in agreement, ordinance or resolution) any unilateral action by a state or local body to invalidate the agreement would violate Article I, Section 10 of the U. S. Constitution as well as similar provisions of many state constitutions.

B. Policy and Practical Considerations:

Any other interpretation of Section 632(c)(2) would be manifestly unfair to the operator and ill-advised from the standpoint of the customer. Although many of the Companies' systems already are subject to local customer service standards that exceed the NCTA Industry Standards in certain respects, these standards almost entirely were arrived at through negotiation. The negotiating process allowed local officials to consider the cost of local offices, new phone systems or other equipment or additional personnel needed to achieve the desired level of customer response in the context of the cost to the subscriber of a total service package. A negotiation process also allowed the cable operator to balance and appropriately time its commitments in other

areas, to avoid jeopardizing other aspects of service and to minimize rate increases.

The comments submitted in this proceeding contain ample examples of the costliness of complying with certain aspects of customer service -- in particular, with requirements relating to staffing of local offices and measurement of telephone response. Unexpected imposition of such substantial new costs is rarely in the best interest of the consumer. If an operator has not planned or budgeted for significant investments and operating costs but has committed funds to other areas in the meantime, the new costs must be covered either by increasing rates or cutting back elsewhere.

C. Proposal:

For these reasons, the Companies believe that new customer service obligations that exceed FCC guidelines are best handled in the context of voluntary negotiations between the operator and the franchising authority. Most typically, such renegotiation should take place in the course of franchise award or renewal, when all aspects of service are on the table and rational financial planning is possible.

As the comments also point out, the vast majority of franchises that have been awarded or renewed recently contain comprehensive customer service standards that often exceed what the FCC is likely to adopt. In addition, many more franchises are within the three year "window" prior to

renewal and will be renegotiated in the near future. In still other franchises the parties have agreed to renegotiate at specific points during the franchise term. Thus, there will be very few circumstances in which renegotiation is foreclosed at length.

The Commission's rules should avoid the above-described pitfalls of unilateral modification unless absolutely necessary. Specifically, those limited situations in which renegotiation is not scheduled to occur within a reasonable time frame and in which there is an urgent need for customer service standards that exceed the Commission's should be addressed in Commission waivers. If the Commission determines that more stringent standards should be imposed without negotiation, the resulting waiver also should permit the operator to pass added costs of compliance through to subscribers without local rate approval. Finally, where standards or requirements in excess of FCC standards are unilaterally imposed rather than negotiated, non-compliance with more stringent aspects of customer service should not be grounds for denial of renewal.

II. SPECIFIC STANDARDS

A. Local Business Office:

The Companies have taken the position that the existence and location of local business offices or bill payment

locations should be a matter for negotiation between the franchising authority and the cable operator. This is particularly important for systems serving multiple communities. Viacom International Inc., for example, operates a system in the Seattle-Tacoma, Washington area that serves some 60 individual franchise areas in which the subscriber count ranges from as few as 31 subscribers in the smallest franchise area to nearly 78,000 in the largest. Although Viacom provides multiple business offices in locations selected to insure convenient subscriber access throughout the service area, it would be prohibitively expensive as well as unnecessary to provide and staff a separate office within each individual jurisdiction.

Once the parties have agreed to establish a local office or offices, however, there remains the issue of availability, which may be covered by the Commission's standards. The current NCTA standards set 9 a.m. to 5 p.m. as normal business hours, and the comments suggest variations upon those hours for business office availability. The Companies point out that many small, stand-alone offices have very limited personnel; sometimes as few as one or two clerical employees staff the office. Where a stand-alone office has a limited total staff (under five employees), keeping the office continuously open during these hours may prove a hardship. The Commission's standards for business office

availability should provide for a reasonable break time during the business day for small offices, so long as the break is publicized as part of the office hours and an effort is made to schedule it at a time that is convenient for subscribers.

B. Telephone Response:

In their comments, the Companies generally supported the NCTA performance standard based on answering 90% of calls received on an annual basis within 30 seconds or comparable unit commonly used for measuring telephone response. The Commission should be aware that switching equipment prevalent in many modern phone systems may not be able to measure the number or percentage of calls where response time exceeds 30 seconds over a given period. Another measure of telephone access commonly available on automatic call distributing phone systems is "average speed of answer" (ASA).² As an option to compliance with the "90% within 30 seconds" standard, cable systems should be permitted to demonstrate prompt telephone response time utilizing the criteria measurable with their particular type of telephone switch.

² Note that ASA is a term for measuring telephone performance commonly utilized in the telephone industry and that different switch providers may use different terms for measuring essentially the same thing.

III. CONCLUSION

The comments submitted in this proceeding provide the Commission with an array of suggestions, many of which will help achieve the objectives of (i) improving customer service where improvement is needed; and (ii) tailoring standards to the unique circumstances and needs of individual communities and their cable operators, without jeopardizing other areas of service or producing unnecessary increases in subscriber rates. In considering all the recommendations before it, the Commission must be ever mindful of the need to balance the cost of its requirements (and of those local requirements which may differ) with the equally important objectives of maintaining reasonable rates and protecting the viability and health of other aspects of cable service.

Respectfully submitted,

VIACOM INTERNATIONAL INC.
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